

1                   UNITED STATES DISTRICT COURT  
2                   EASTERN DISTRICT OF NORTH CAROLINA  
3                   WESTERN DIVISION

4                   UNITED STATES OF AMERICA, -      Docket No. 5:18-CR-452-FL-1  
5    -  
6                   Plaintiff,                            -      New Bern, North Carolina  
7    -      January 14, 2020  
8                   v.                                    -      Motion Hearing  
9    -  
10                  LEONID ISAAKOVICH TEYF, -  
11                  Defendant.                            -  
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12    TRANSCRIPT OF MOTION HEARING  
13    BEFORE THE HONORABLE LOUISE WOOD FLANAGAN  
14    UNITED STATES DISTRICT JUDGE.

15    APPEARANCES:

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32    Tatyana Draga

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Proceedings recorded by mechanical stenography,  
transcript produced by notereading.

1 (Commenced at 1:31 p.m.)

2 (The interpreters, Marianne Duhertov and  
3 Tatyana Draga, were previously sworn.)

4 THE COURT: We continue on with Mr. Teyf  
00:00:05 5 present, and the government is well represented as well.

00:00:10 6 What relief are you seeking, Ms. Kocher?

00:00:12 7 MS. KOCHER: Your Honor, the government  
00:00:14 8 seeks the defendant be held in contempt for his failure  
00:00:17 9 to respond.

00:00:18 10 THE COURT: What's that going to look like?

00:00:20 11 MS. KOCHER: It would be the government's  
00:00:21 12 request that the Court make findings that holding the  
00:00:26 13 defendant in civil contempt would be of no import. We  
00:00:32 14 can -- he's in custody. A hefty fine daily I don't  
00:00:38 15 think would help what caused -- I think the intention is  
00:00:45 16 clear to not respond to whatever order the Court would  
00:00:49 17 issue in regard to holding him contempt until he  
00:00:51 18 complies. So the government would request that he be  
00:00:56 19 held in criminal contempt for the failure to comply and  
00:00:59 20 for the representations that have been made that he will  
00:01:00 21 continue to fail to comply such that an appeal can be  
00:01:03 22 immediately taken.

00:01:04 23 THE COURT: What's criminal contempt going  
00:01:06 24 to look like?

00:01:07 25 MS. KOCHER: The criminal contempt would be

00:01:10 1 the opportunity to be heard, as is here today, and then  
00:01:12 2 a sentence at the Court's discretion.

00:01:16 3 THE COURT: Is the grand jury still in  
00:01:19 4 session that he failed to respond to?

00:01:24 5 MS. KOCHER: I don't believe that that  
00:01:28 6 particular grand jury is, Your Honor. But the body --  
00:01:32 7 the subpoena would roll over to the next body. It  
00:01:36 8 certainly is still meeting.

00:01:39 9 THE COURT: Okay. Who is going to be  
00:01:43 10 speaking?

00:01:43 11 Thank you.

00:01:44 12 MR. ALLEN: Your Honor, I will at least  
00:01:48 13 start, and if there's something that Mr. Wolf needs to  
00:01:50 14 chime in on, I hope Your Honor will permit that.

00:01:54 15 So it is news to me that the grand jury is  
00:02:00 16 not currently sitting because I think that moots this  
00:02:03 17 question, if I understand what has just been said  
00:02:07 18 correctly. In fact, I do not have the case here, but I  
00:02:13 19 have seen a case that says that, that if the grand jury  
00:02:17 20 is no longer sitting, the subpoena is moot, and this  
00:02:21 21 question is moot. And so I would start there.

00:02:26 22 And if Your Honor will indulge me for a  
00:02:29 23 moment, I can find a case cite on that.

00:02:32 24 THE COURT: Is that civil contempt that  
00:02:34 25 you're speaking of, with "No period of confinement shall

00:02:46 1 exceed the term of the grand jury"?

00:02:55 2 MR. ALLEN: Your Honor, that is a part of  
00:02:56 3 it, but I would submit that it also applies equally to  
00:03:00 4 the criminal contempt because the body issuing the  
00:03:03 5 subpoena is no longer sitting, at the very least. And  
00:03:08 6 there may be additional language in the case; I'm  
00:03:11 7 thinking about that. But I would definitely submit that  
00:03:16 8 the subpoena is moot at this point, so we should instead  
00:03:20 9 turn our energies to a very full plate.

00:03:25 10 THE COURT: We do have a full plate.

00:03:35 11 So the government thinks the court should  
00:03:37 12 skip over civil contempt and move right to criminal  
00:03:40 13 contempt?

00:03:40 14 MS. KOCHER: That is the government's  
00:03:42 15 position, Your Honor.

00:04:02 16 THE COURT: Do you remember the case name?

00:04:06 17 MR. ALLEN: Your Honor, I beg your pardon.  
00:04:08 18 I am digging through. I am seeing one that discusses  
00:04:15 19 the least possible power adequate to end a proposed  
00:04:20 20 issue should be used. But I am not finding in my stack  
00:04:25 21 of cases that which I am mindful of. I'll certainly  
00:04:30 22 request the opportunity to submit that, if I am  
00:04:35 23 remembering it correctly, and I believe that I am.

00:04:38 24 THE COURT: All right. So if you're  
00:04:39 25 remembering it correctly, and if what you say is true,

00:04:48 1 how much time does that really buy the defendant?

00:04:54 2 MR. ALLEN: Your Honor, I suppose if the  
00:04:57 3 government is absolutely intent on issuing another  
00:05:00 4 subpoena with a new grand jury, then we may confront  
00:05:03 5 this issue again. But it would be better confronted in  
00:05:07 6 that context in which there is a valid, not moot,  
00:05:14 7 subpoena.

00:05:16 8 On the issue of civil versus criminal, Your  
00:05:19 9 Honor, I would submit the most efficient way to proceed  
00:05:22 10 would be a civil finding. He is in jail, obviously, as  
00:05:27 11 we sit here. It's not where he wants to be. It would  
00:05:32 12 allow him to avail himself, as I understand it from  
00:05:38 13 the -- there's a case, Search of 235 Queen Street, 319  
00:05:45 14 Fed. Appx. 197, I'm glad to hand up, that this is the  
00:05:48 15 normal way that this is handled.

00:05:50 16 THE COURT: I'm familiar with that strain of  
00:05:52 17 the law, and I've certainly come upon that myself in  
00:05:57 18 doing research.

00:06:00 19 Does the government want to be heard further  
00:06:03 20 on the mootness issue or any other?

00:06:05 21 MS. KOCHER: Your Honor, only with the  
00:06:06 22 request, because this has just come up today, to be able  
00:06:10 23 to confirm two things: first, that the grand jury is  
00:06:14 24 not the same body that was present at the time the  
00:06:17 25 subpoena was issued; and second, to look at the case

00:06:23 1 law, which is yet unnamed, in regard to --

00:06:28 2 THE COURT: Well, I would say you ought to

00:06:30 3 have come today with that information because it's

00:06:34 4 important to the Court's analysis, whether the grand

00:06:38 5 jury is still sitting or not.

00:06:40 6 Do you think if you just excused yourself

00:06:42 7 you could make a phone call?

00:06:44 8 MS. KOCHER: I could certainly do that, yes.

00:06:47 9 THE COURT: Why don't we, for efficiency's

00:06:49 10 sake, learn that now.

00:06:52 11 We'll stand at ease awaiting Ms. Kocher's

00:06:55 12 return.

00:12:18 13 (Discussion had off the record.)

00:12:34 14 THE COURT: So we're in a position to learn.

00:12:40 15 MS. KOCHER: I believe, Your Honor, that the

00:12:41 16 grand jury, that particular body of people, expired in

00:12:46 17 June of 2019.

00:13:00 18 THE COURT: Okay. Do you want ten days to

00:13:03 19 brief this?

00:13:05 20 MR. ALLEN: We'd be grateful, Your Honor.

00:13:07 21 THE COURT: Do you want ten days to respond

00:13:09 22 after that?

00:13:10 23 MS. KOCHER: Thank you, Your Honor.

00:13:10 24 THE COURT: Okay. Can we just talk

00:13:12 25 practically speaking? There are a lot of things on

00:13:16 1 everybody's plate. I don't see this necessary to be  
00:13:20 2 decided before the trial; do you, Ms. Kocher?

00:13:31 3 MS. KOCHER: I believe that my answer would  
00:13:33 4 be: It depends, Your Honor. And I am careful in my  
00:13:49 5 articulation because I don't want to overspeak or have  
00:13:52 6 the main purpose of that subpoena appear in any way to  
00:13:57 7 be evidence for the trial. It certainly was not. Trial  
00:14:01 8 was not a speck in our eye at the time that that  
00:14:05 9 subpoena was issued. And I think the case law strongly  
00:14:09 10 supports that it is the purpose for which the subpoena  
00:14:12 11 was generated that's the issue.

00:14:15 12 We stand here now, though, Your Honor,  
00:14:17 13 counting down the weeks until trial, which are not very  
00:14:20 14 far away. No reciprocal discovery. And it would be the  
00:14:25 15 government's position that to the extent that the  
00:14:28 16 defendant will be bringing in financial records, if he  
00:14:38 17 chooses to put on a defense, and that defense would  
00:14:40 18 include financial records to show the preexistence of  
00:14:45 19 significant sums of money, that is where my thought is  
00:14:51 20 going. And I'm trying to figure out what the  
00:14:55 21 government's position would be in that event if they  
00:14:58 22 appear at trial when all of this time we've had -- and  
00:15:04 23 are only here because of the defendant's ongoing failure  
00:15:07 24 to comply. So with all of that, I don't have an answer.

00:15:13 25 MR. ALLEN: Your Honor, with that

00:15:14 1 articulation, and respectfully, it does sound very much  
00:15:20 2 like it is intended for trial purposes. I don't know  
00:15:23 3 how else to interpret what we just heard.

00:15:29 4 THE COURT: Reciprocal discovery in all  
00:15:31 5 respects is outstanding?

00:15:36 6 MR. ALLEN: That is correct. We have not  
00:15:38 7 provided any discovery. We have not yet determined  
00:15:41 8 whether we intend to introduce at trial. We'll  
00:15:45 9 certainly come to a moment where, as Your Honor has  
00:15:46 10 discussed earlier, we need to turn those records over if  
00:15:49 11 they're going to be used with foreign witnesses that we  
00:15:52 12 would offer up at trial. And we understand that, and  
00:15:55 13 we'll have those translated and usable in the timeframe  
00:15:58 14 Your Honor has set forth.

00:16:02 15 I don't know if that addresses Your Honor's  
00:16:05 16 question.

00:16:13 17 THE COURT: All right. Well, I think we've  
00:16:15 18 taken it about as far as we can today. Is there  
00:16:18 19 anything further from the government?

00:16:20 20 MS. KOCHER: No, Your Honor.

00:16:20 21 THE COURT: And from the defendant?

00:16:21 22 MR. ALLEN: No, Your Honor. Thank you.

00:16:22 23 THE COURT: Mr. Teyf, have you understood  
00:16:25 24 everything I've said here today?

00:16:32 25 THE DEFENDANT: Yes, thank you. I've

00:16:33 1 understood everything.

00:16:34 2 THE COURT: Are you satisfied with the  
00:16:36 3 interpreter services being provided to you?

00:16:43 4 THE DEFENDANT: Yes, thank you, Your Honor;  
00:16:44 5 I am happy and satisfied.

00:16:46 6 THE COURT: Good. I will just tell you now,  
00:16:48 7 and I will remind you, but what I have to say now goes  
00:16:52 8 for every point in this proceeding through trial. If at  
00:16:58 9 any point in time you do not understand something, if at  
00:17:05 10 any point in time you are not satisfied with the  
00:17:08 11 interpreter services being provided to you, you must let  
00:17:12 12 me know. Will you do that?

00:17:19 13 THE DEFENDANT: Yes, definitely, Your Honor.

00:17:21 14 THE COURT: Very good. Thank you.

15 (Concluded at 1:49 p.m.)

16 - - -  
17

18 C E R T I F I C A T E

19  
20 I certify that the foregoing is a correct transcript  
21 from the record of proceedings in the above-entitled  
22 matter.

23  
24 /s/ Tracy L. McGurk \_\_\_\_\_  
25 Tracy L. McGurk, RMR, CRR

1/15/2020 \_\_\_\_\_

Date

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